

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RAYMOND P. BOIVIN,)	
)	
Plaintiff)	
)	
v.)	Civil 97-CV-177-B
)	
JEFFREY MERRILL, et al.,)	
)	
Defendant)	

ORDER AND MEMORANDUM OF DECISION

Brody, District Judge

Plaintiff Raymond P. Boivin brings this § 1983 action against Defendant Earle Albert (“Albert”), a correctional officer at Maine Correctional Institution-Warren (“MCI-Warren”), and Albert's supervisor, Defendant Donald Black (“Black”).¹ Plaintiff alleges that while he was a pretrial detainee at MCI-Warren, Albert handcuffed him, placed him in a restraint chair, wrapped him in a security blanket, and covered his mouth with a towel resulting in a loss of consciousness, and Black ordered or acquiesced to Albert's actions, in violation of Plaintiff's due process rights under the Fourteenth Amendment. Specifically, Plaintiff claims that he was punished without due process of law and subjected to unreasonable physical restraint. Before the Court are Black's Motion for Partial Dismissal and Black's Motion for Partial Summary Judgment. For the reasons set forth below, the Motion for Partial Dismissal and the Motion for Partial Summary Judgment are DENIED.

I. BACKGROUND

¹ On June 16, 1998, the Court entered an order accepting the Magistrate Judge's Recommended Decision dismissing Defendants Merrill, Magnusson, and Riley.

On November 14, 1996, Plaintiff was a pretrial detainee at MCI-Warren. That afternoon, Plaintiff began banging his head against the door of his cell.² After being informed of Plaintiff's behavior by fellow correctional officers, Black decided to check on Plaintiff. At the time of this incident, Black was aware that Plaintiff had a history of self-injurious behavior and combativeness with staff at other facilities.

Prior to Black's arrival at Plaintiff's cell, Plaintiff had allowed himself to be handcuffed by correctional officers and complied with their request that he lay down on his bunk. When Black reached Plaintiff's cell, he saw that Plaintiff was naked and lying face down on his bunk while correctional officers placed him in leg irons. Black observed a cut and swelling on Plaintiff's head.

Black ordered that Plaintiff be placed in a restraint chair.³ He also offered Plaintiff medical treatment for his head injury, which Plaintiff refused. While waiting for correctional officers to bring the restraint chair, Plaintiff did not resume self-injurious behavior. Plaintiff also allowed correctional officers to remove his handcuffs and handcuff him behind his back, and voluntarily sat down in the restraint chair. By this time, there were at least six correctional officers in Plaintiff's cell, including Black.

² Neither party alleges the exact time at which the events giving rise to this lawsuit began nor their duration.

³ A "restraint chair" is a mechanical device with a number of adjustable straps used to bind a person. Two straps proceed from the top of each shoulder down across the individual's body to a buckle on the opposite side near the waist, similar to the way a car seatbelt works. Another strap extends across the waist and is locked with a key. Other straps hold the individual's ankles against the base of the chair. The seat of the restraint chair is pitched back at a thirty degree angle in order to keep the individual in the chair by the force of his body weight. The chair has a recess in the rear where the hands of a person handcuffed behind his back can rest.

Following Plaintiff's placement in the restraint chair, Black was informed by another correctional officer that Plaintiff had wriggled out of the shoulder straps. Correctional officers then reapplied the straps. When Black later observed that Plaintiff had loosened the straps a second time, he ordered that Plaintiff be wrapped in a "security blanket."⁴ Plaintiff complied with Black's instruction to lay down on his bunk, where correctional officers proceeded to roll Plaintiff in the security blanket and fasten a strap tightly around him to hold the blanket in place. Black then directed Albert and other correctional officers to return Plaintiff, wrapped in the security blanket, to the restraint chair.

While being reconfined to the restraint chair, Plaintiff struggled against the restraints and his face turned purple. Plaintiff also threatened to spit on correctional officers. In response, Albert placed a towel over Plaintiff's nose and mouth, and held it in place from behind Plaintiff's head. According to Plaintiff, Albert acted on an order from Black. Black concedes that he was at least present when the towel was used. Shortly after the towel was placed over his face, Plaintiff's ears turned blue and he lost consciousness.

This incident was not videotaped despite the availability of video equipment and a Maine Department of Corrections policy which requires videotaped documentation of the use of restraints.

II. MOTION FOR PARTIAL DISMISSAL

Black seeks dismissal of the claim that he violated Plaintiff's due process rights by ordering that a towel be placed over Plaintiff's mouth, or, in the alternative, by permitting Albert to place the towel across Plaintiff's face. Black argues that this claim should be dismissed

⁴ A "security blanket" is a blanket made out of material too heavy and inflexible to be rolled into a noose.

because (i) Plaintiff has not alleged sufficient facts to make out a constitutional violation, including facts establishing a sufficiently culpable state of mind; and (ii) Black is entitled to qualified immunity.

When faced with a Motion to Dismiss brought pursuant to Fed. R. Civ. P. 12 (b)(6), the Court views all of the plaintiff's factual averments as true and indulges every reasonable inference in the plaintiff's favor. Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996). The Court may grant a defendant's Motion to Dismiss "only if it clearly appears, according to the facts alleged, that the plaintiff cannot recover on any viable theory." Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 52 (1st Cir. 1990).

To make out a due process claim, a pretrial detainee must demonstrate that he was subject to treatment constituting punishment by alleging either direct evidence of a defendant's intent to punish him or circumstantial evidence from which intent to punish can be inferred. See O'Connor v. Huard, 117 F.3d 12, 16 (1st Cir. 1997). Circumstantial evidence sufficient to infer an intent to punish may include a showing that the defendant's treatment of the plaintiff was disproportionate, excessive, and unreasonable in relation to a legitimate goal. See id.

Here, Plaintiff alleges that in response to threats that he would spit, Black ordered or allowed a towel to be placed over Plaintiff's nose and mouth causing or contributing to his inability to breathe and subsequent loss of consciousness. These facts plainly are sufficient to permit a factfinder to infer that Black's action or lack thereof were so excessive and unreasonable as to constitute punishment. Thus, the Court finds that Plaintiff has stated a cause of action for a violation of his due process rights.

Black's contention that his liability is precluded by qualified immunity is similarly unpersuasive. Qualified immunity analysis is two-fold: (i) has the plaintiff alleged the violation of a clearly established right, and (ii) should a reasonable, similarly situated official have understood that the challenged conduct violated that clearly established right? See Swain v. Spinney, 117 F.3d 1, 9 (1st Cir. 1997); Comfort v. Town of Pittsfield, 924 F. Supp. 1219, 1227 (D. Me. 1996). Applying this analysis to the present case, it is evident that Black is not entitled to qualified immunity. A pretrial detainee's due process right to be free from punishment is clearly established. See Bell v. Wolfish, 441 U.S. 520, 535-36 (1979); O'Connor, 117 F.3d at 16. Moreover, the facts alleged in the Complaint, taken as true, support a claim that Black reasonably should have known that his action contravened this clearly established right.

Because Plaintiff has stated a Fourteenth Amendment claim and Black does not enjoy the protection of qualified immunity, the Motion for Partial Dismissal is denied.

III. MOTION FOR PARTIAL SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for these purposes if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A material fact is one that has "the potential to affect the outcome of the suit under the applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be drawn from "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits." Fed. R. Civ. P. 56(c). For the purposes of summary judgment the

Court views the record in the light most favorable to the nonmoving party. See McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995).

Black seeks summary judgment on Plaintiff's claims that Black violated his due process rights by ordering that he be placed in a restraint chair and by directing that he be wrapped in a security blanket. Black argues that Plaintiff has not demonstrated the existence of a genuine issue of material fact as to whether Black acted with the requisite intent and also that he is entitled to qualified immunity.

As discussed above, a pretrial detainee may demonstrate an intent to punish and consequent due process violation by presenting circumstantial evidence showing that a defendant's actions were unreasonable in relation to a legitimate goal. In the present case, the evidence indicates that there is a genuine issue of fact concerning Black's mental state.

With regard to his initial decision to place Plaintiff in the restraint chair, for example, Black argues that this determination was reasonable given his knowledge of Plaintiff's history of self-injury and combativeness, the visible injury to Plaintiff's head, and his refusal of medical treatment. Plaintiff, however, counters that Black's order was unnecessary and unreasonable because he had stopped banging his head against the door and had cooperated with correctional officers by allowing himself to be handcuffed and shackled, and by lying down on his bunk. Plaintiff also points out that Black does not remember whether his knowledge of Plaintiff's history factored into his decision to place Plaintiff in the restraint chair.

A similar dispute exists concerning Black's motive for ordering Plaintiff wrapped in a security blanket. While both parties agree that Plaintiff twice wriggled out of the restraint chair's shoulder straps, Black contends that his decision to place Plaintiff in the security blanket was

necessary to ensure that Plaintiff could not further injure himself or escape from the restraint chair. In contrast, Plaintiff argues that he was neither attempting to injure himself nor to escape, and that Black's professed concern for his welfare is pretextual since it was clear that Plaintiff could not possibly have injured himself while in the restraint chair, even without the shoulder straps.

The Court is satisfied that these factual disputes present a genuine issue as to the intent with which Black ordered Plaintiff placed in the restraint chair and wrapped in a security blanket. For the reasons stated in its December 22, 1998 Order and Memorandum of Decision in Boivin v. Magnusson, the Court also finds that such unresolved factual questions concerning Black's state of mind undermine his qualified immunity defense. Black's Motion for Partial Summary Judgment is therefore denied.

IV. CONCLUSION

For the reasons stated above, Black's Motion for Partial Dismissal and Motion for Partial Summary Judgment are DENIED.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this 6th day of January, 1999.